

1 Michael St. James, CSB No. 95653
ST. JAMES LAW, P.C.
2 22 Battery Street, Suite 810
San Francisco, California 94111
3 (415) 391-7566 Telephone
(415) 391-7568 Facsimile
4 michael@stjames-law.com

5 | Counsel for Inverness Advisors, LLC and Tom Peters

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

San Francisco Division

12 In re Case No. 20-30819 DM
13 BENJA INCORPORATED Chapter 7
14 Debtor
15 _____
16 KYLE EVERETT, TRUSTEE Case No. 21-03060 DM
17 Plaintiff
18 vs.
19 THOMAS B. PETERS
Defendant

ANSWER

COMES NOW Thomas B. Peters and Answers the Trustee's Amended Complaint herein as follows:

1. Defendant denies the allegations of Paragraph 1 of the Complaint on lack of information and belief.

2. Defendant denies the allegations of Paragraph 2 of the Complaint on lack of information and belief.

1 3. Defendant denies the allegations of Paragraph 3 of the Complaint on lack of information
2 and belief.

3 4. Defendant denies the allegations of Paragraph 4 of the Complaint on lack of information
4 and belief.

5 5. Defendant denies the allegations of Paragraph 5 of the Complaint on lack of information
6 and belief.

7 6. Defendant denies the allegations of Paragraph 6 of the Complaint on lack of information
8 and belief.

9 7. Defendant denies the allegations of Paragraph 7 of the Complaint on lack of information
10 and belief.

11 8. Defendant denies the allegations of Paragraph 8 of the Complaint on lack of information
12 and belief, except as to the final sentence of Paragraph 8, which Defendant denies.

13 9. Defendant denies Paragraph 9 of the Complaint.

14 10. Defendant denies the allegations of Paragraph 10 of the Complaint on lack of information
15 and belief.

16 11. Defendant admits the allegations of Paragraph 11 of the Complaint.

17 12. Defendant admits the allegations of Paragraph 12 of the Complaint.

18 13. Defendant admits the allegations of Paragraph 13 of the Complaint.

19 14. Defendant admits the allegations of Paragraph 14 of the Complaint and also consents to
20 the entry of a final judgment by the Court.

21 15. Defendant admits the allegations of Paragraph 15 of the Complaint.

22 16. Defendant denies the allegations of Paragraph 16 of the Complaint.

23 17. Defendant denies the allegations of Paragraph 17 of the Complaint on lack of information
24 and belief.

1 18. Defendant admits the allegations of the first sentence of Paragraph 18 of the Complaint
2 and denies the other allegations of Paragraph 18 of the Complaint on lack of information and belief.

3 19. Defendant denies the allegations of Paragraph 19 of the Complaint on lack of information
4 and belief.

5 20. Defendant denies the allegations of Paragraph 20 of the Complaint on lack of information
6 and belief.

7 21. Defendant denies the allegations of Paragraph 21 of the Complaint on lack of information
8 and belief.

9 22. Defendant denies the allegations of Paragraph 22 of the Complaint on lack of information
10 and belief.

11 23. Defendant denies the allegations of Paragraph 23 of the Complaint on lack of information
12 and belief.

13 24. Defendant denies the allegations of Paragraph 24 of the Complaint on lack of information
14 and belief.

15 25. Defendant admits the allegations of the first sentence of Paragraph 25 of the Complaint
16 and denies all of the other allegations of Paragraph 25 of the Complaint on lack of information and
17 belief.

18 26. Defendant denies the allegations of Paragraph 26 of the Complaint on lack of information
19 and belief.

20 27. Defendant denies the allegations of Paragraph 27 of the Complaint on lack of information
21 and belief.

22 28. Defendant admits the allegations of Paragraph 28 of the Complaint.

23 29. Defendant admits the allegations of Paragraph 29 of the Complaint.

24 30. Defendant denies the allegations of Paragraph 30 of the Complaint on lack of information

1 and belief.

2 31. Defendant denies the allegations of Paragraph 31 of the Complaint on lack of information
3 and belief.

4 32. Defendant denies the allegations of Paragraph 32 of the Complaint on lack of information
5 and belief.

6 33. Defendant denies the allegations of Paragraph 33 of the Complaint on lack of information
7 and belief.

8 34. Defendant denies the allegations of Paragraph 34 of the Complaint on lack of information
9 and belief.

10 35. Defendant denies the allegations of Paragraph 35 of the Complaint on lack of information
11 and belief.

12 36. Defendant admits the allegations of Paragraph 36.

13 37. Defendant denies the allegations of Paragraph 37 of the Complaint on lack of information
14 and belief.

15 38. Defendant denies the allegations of Paragraph 38 of the Complaint on lack of information
16 and belief.

17 39. Defendant admits the allegations of Paragraph 39 of the Complaint.

18 40. Defendant denies the allegations of Paragraph 40 of the Complaint on lack of information
19 and belief.

20 41. Defendant denies the allegations of Paragraph 41 of the Complaint on lack of information
21 and belief.

22 42. Defendant denies the allegations of Paragraph 42 of the Complaint on lack of information
23 and belief.

24 43. Defendant denies the allegations of Paragraph 43 of the Complaint on lack of information

1 and belief.

2 44. Defendant denies the allegations of Paragraph 44 of the Complaint on lack of information
3 and belief.

4 45. Defendant denies the allegations of Paragraph 45 of the Complaint on lack of information
5 and belief.

6 46. Defendant denies the allegations of Paragraph 46 of the Complaint on lack of information
7 and belief.

8 47. Defendant re-alleges and incorporates by this reference his responses to the preceding
9 allegations.

10 48. Defendant denies the allegations of Paragraph 48 of the Complaint on lack of information
11 and belief.

12 49. Defendant denies the allegations of Paragraph 49 of the Complaint on lack of information
13 and belief.

14 50. Defendant re-alleges and incorporates by this reference his responses to the preceding
15 allegations.

16 51. Paragraph 51 of the Complaint is a tautology which requires no response by Defendant.

17 52. Defendant denies the allegations of Paragraph 52 of the Complaint on lack of information
18 and belief.

19 53. Defendant denies the allegations of Paragraph 53 of the Complaint on lack of information
20 and belief.

21 54. Defendant denies the allegations of Paragraph 54 of the Complaint on lack of information
22 and belief.

23 55. Defendant denies the allegations of Paragraph 55 of the Complaint on lack of information
24 and belief.

1 56. Defendant denies the allegations of Paragraph 56 of the Complaint on lack of information
2 and belief.

3 57. Defendant re-alleges and incorporates by this reference his responses to the preceding
4 allegations.

5 58. Paragraph 58 is a tautology which requires no response by Defendant.

6 59. Defendant denies the allegations of Paragraph 59 of the Complaint on lack of information
7 and belief.

8 60. Defendant denies the allegations of Paragraph 60 of the Complaint on lack of information
9 and belief.

10 61. Defendant denies the allegations of Paragraph 61 of the Complaint on lack of information
11 and belief.

12 62. Defendant denies the allegations of Paragraph 62 of the Complaint on lack of information
13 and belief.

14 63. Defendant denies the allegations of Paragraph 63 of the Complaint on lack of information
15 and belief.

16 64. Defendant denies the allegations of Paragraph 64 of the Complaint on lack of information
17 and belief.

18 65. Defendant re-alleges and incorporates by this reference his responses to the preceding
19 allegations.

20 66. Paragraph 66 is a tautology which requires no response by Defendant.

21 67. Defendant denies the allegations of Paragraph 67 of the Complaint on lack of information
22 and belief.

23 68. Defendant denies the allegations of Paragraph 68 of the Complaint on lack of information
24 and belief.

25

1 69. Defendant denies the allegations of Paragraph 69 of the Complaint on lack of information
2 and belief.

3 70. Defendant denies the allegations of Paragraph 70 of the Complaint on lack of information
4 and belief.

5 71. Defendant denies the allegations of Paragraph 71 of the Complaint on lack of information
6 and belief.

7 72. Defendant denies the allegations of Paragraph 72 of the Complaint on lack of information
8 and belief.

9 73. Defendant re-alleges and incorporates by this reference his responses to the preceding
10 allegations.

11 74. Paragraph 74 is a tautology which requires no response by Defendant.

12 75. Defendant denies the allegations of Paragraph 75 of the Complaint on lack of information
13 and belief.

14 76. Defendant denies the allegations of Paragraph 76 of the Complaint on lack of information
15 and belief.

16 77. Defendant denies the allegations of Paragraph 77 of the Complaint on lack of information
17 and belief.

18 78. Defendant denies the allegations of Paragraph 78 of the Complaint on lack of information
19 and belief.

20 79. Defendant denies the allegations of Paragraph 79 of the Complaint on lack of information
21 and belief.

22 80. Defendant denies the allegations of Paragraph 80 of the Complaint on lack of information
23 and belief.

24 81. Defendant re-alleges and incorporates by this reference his responses to the preceding

allegations.

82. Defendant denies the allegations of Paragraph 82 of the Complaint on lack of information and belief.

83. Defendant denies the allegations of Paragraph 83 of the Complaint on lack of information and belief.

84. Defendant denies the allegations of Paragraph 84 of the Complaint on lack of information and belief.

85. Defendant re-alleges and incorporates by this reference his responses to the preceding allegations.

86. Defendant denies the allegations of Paragraph 86 of the Complaint on lack of information and belief.

WHEREFORE, Defendant prays as hereinafter set forth.

AFFIRMATIVE DEFENSES

Without assuming any burden Defendant would not otherwise bear, Defendant asserts the following affirmative defenses (and/or counterclaims if so designated pursuant to Federal Rules of Bankruptcy Procedure 7008) to the Complaint:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim in whole or in part against Defendant upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable hereto by Federal Rule of Bankruptcy Procedure 7012(b).

SECOND AFFIRMATIVE DEFENSE

The Trustee has not met its burden under 11 U.S.C. § 544, by which the Trustee incorporates Civil Code Section 3440 with respect to the transfer identified in the Complaint to the extent that (a) such transfer was not made with the actual intent to hinder, delay, or defraud any creditor of the Debtor;

and (b) the Debtor received reasonably equivalent value in exchange for the transfer or obligation, and (i) the Debtor was not engaged nor was it about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or transaction and (ii) the Debtor did not intend to incur nor did the Debtor believe or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

THIRD AFFIRMATIVE DEFENSE

This Defendant received the transfers alleged in the Complaint in good faith and for value and without knowledge of the voidability of the transfers. If such transfers are avoided, this Defendant is entitled to a lien against the assets or any monetary claim with respect thereto for the value given pursuant to 11 U.S.C. §548(c) and §550(e).

FOURTH AFFIRMATIVE DEFENSE

This Defendant received the transfers alleged in the Complaint in good faith and for reasonably equivalent value. Cal. Civ. Code §3439.08(a).

FIFTH AFFIRMATIVE DEFENSE

This Defendant received the transfers alleged in the Complaint in good faith. In the event that the transfers are avoided or judgment therefor is entered, the Defendant is entitled to a lien on or right to retain any interest in the asset transferred, enforcement of the obligations incurred, and/or reduction in the amount of any judgment. Cal. Civ. Code §3439.08(d).

SIXTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, by waiver, laches, release, estoppel, set-off, recoupment, statute of frauds, unclean hands, and any other matter constituting a defense allowable under the Federal Rules of Civil Procedure made applicable hereto by the Federal Rules of Bankruptcy Procedure, as such matters may be developed during discovery.

SEVENTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, by the applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

The Trustee is not entitled to recover fees, costs, interest or expenses.

NINTH AFFIRMATIVE DEFENSE

Upon information and belief, and pending an opportunity for complete discovery, the Plaintiff's claims are barred to the extent the Judgment Debtor/Transferor was not insolvent at the time of the alleged transfers.

TENTH AFFIRMATIVE DEFENSE

Upon information and belief, and pending an opportunity for complete discovery, the Transfer was not property of the Debtor, and so liability for the Defendant under Section 547 does not arise.

ELEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, the Transfer was intended by the Debtor and the Defendant to be a contemporaneous exchange for new value given to the Debtor, and was in fact a substantially contemporaneous exchange, and so liability for the Defendant under Section 547 does not arise.

TWELFTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and/or supplement this Answer, including, without limitation, to assert additional affirmative defenses.

PRAYER

WHEREFORE, Defendant respectfully requests that the Court enter an order determining and adjudging that the Trustee is not entitled to any of the relief he seeks against Defendant, dismissing the Complaint with prejudice, and granting such other and further relief as is just and proper.

DATED: March 30, 2022

ST. JAMES LAW, P.C.

By: /s/ Michael St James
Michael St. James
Counsel for Defendant